RSA 97/2003
BEFORE
HON'BLE MR. JUSTICE N. CHAUDHURY

By this second appeal the appellants who were defendants in the main suit, have challenged the concurrent findings of the learned Courts below in regard to right, title and interest over 1 Kedar 3 Pons 8 Gondas and 3 Karas of land covered by permanently settled State - under Parganah - Iswarsri in the District of Karimganj. Plaintiffs instituted Title Suit No. 268 of 1993 in the Court of learned Civil Judge (Junior Division) No. 1, Karimganj stating that the suit land alongwith other lands originally belonged to Jamindars Babu Bama Charan Das, Smti. Sushila Mayee Das and Smti. Manorama Dasi. One Aswini Das was a jotedar with respect to 50 percent of the said land measuring 4 Kedars 13 Pons and 15 Gondas. Thereafter said Ashwini Kr. Das during his life time sold 50 percent tenancy right to Rajani Kanta Das and Basanta Kumar Das and the balance 50 percent was sold to one Bhupendra Chandra Das. As per the prevailing practice at that time, sale of tenancy right used to be performed by causing necessary entries in the tauzi of the jamindars and thus the transferee tenant used to become a direct tenant under the original Landlord. Name of Rajani Kanta Das was entered in the tauzi of the then jamindar, Manorama Dasi. However, his brother Basanta Kumar Das was also a co-beneficiary of the aforesaid transfer of tenancy. After death of Rajani Kanta Das his son Ritendra Kr. Das (plaintiff No. 1) inherited the tenancy right and similarly the other plaintiffs inherited the right of Basanta Kr. Das. It is pleaded that Basanta Kr. Das during the later part of his life shifted his residence to Damchara in the State of Tripura for business purpose although Ritendra remained as a custodian of their rights although they had amicably partitioned the property. It is the case of the plaintiff that in the year 1965 the defendant No. 1 for the first time filed Title Suit No. 125/1965 seeking to get an adjudication to the effect that Plaintiff No. 1 was merely a licencee under him and consequently he was liable to be evicted. The said suit having been eventually dismissed on 11.11.1965, subsequently the same defendant No. 1 is alleged to have entered into conspiracy with the revenue staff and thereby got the name of the Plaintiff No. 1 deleted from the records. In the meantime on 15.03.1993 the defendant No. 1 dispossessed the plaintiffs No. 2 to 4 from a part of the suit land being share of Late Basanta Kr. Das and also threatened to dispossess the plaintiff No. 1, Ritendra Kumar Das. Defendant No. 1, according to the plaintiffs, started claiming that they had purchased the suit land from Bhupendra Kumar Das as well as Ashwini Kumar Das and was seeking to dispossess the plaintiffs. Situated thus, plaintiffs filed the suit for declaration of their right, title and interest with respect to …th portion of 4 Kedars 13 Pons and 15 Gondas of land and also for recovery of possession of the part of the said land from where they have been dispossessed by the defendants and also prayed for imperfect partition.

2. Appearing in the case the defendants disputed the claim of the plaintiffs. The defendants denied that plaintiffs purchased any land or a tenancy right from Aswini Kumar Das in any point of time and that the defendant No. 1 really purchased the tenancy right of the suit land from Aswini Kumar Das on the basis of sale deed dated 12.08.1963. With these statements the defendants further pleaded that the plaintiffs could not stake claim to the suit land unless and until there was any partition of the land in question.

3. On the basis of the aforesaid pleadings of the parties, the learned trial Court framed as many as 5 issues and the same are as follows:

I. Is there any cause of action for the suit?

II. Is the suit maintainable in its present form?

III. Whether the plaintiffs have land holder's right over … of the land mentioned in dag 1 and 2 of schedule 1 and owner ship right over the house mentioned in schedule of the plaint?

IV. To what relief or reliefs if any the plaintiffs are entitled?

5. Plaintiff examined five witnesses and exhibited 16 documents. The defendants on the other side examined 3 witnesses and exhibited 7 documents.

6. The learned trial Court by judgment and decree dated 28.07.2000 decreed the suit of the plaintiffs holding that the farogs marked as Ext.-1 to 6. Ext.2 - the revenue receipt issued by the Landlord, Ext.3 - voter list, Ext.6 - farogs and Ext.7 - khatian show that the plaintiffs were in possession of the land in question under the zamindaars as tenant paying revenue. On the other hand Ext.-9 is the certified copy of judgment in Title Suit No. 125 of 1965 of which Ext.-13 is the decree and it appear that the predecessor of the plaintiffs Smt. Chandra Das filed the earlier suit for eviction of the defendant No. 1 and others describing them as licencee and the same suit was eventually dismissed observing that the present plaintiff was a jotedar. Ext.-10, 11 & 12 are the certified copy of deposition of the plaintiffs in earlier Title Suit No. 125 of 1965. Upon consideration of all these documents and comparing the same with Ext.-A which is the aforesaid registered sale deed dated 12.08.1963 in favour of the defendant No. 1, the learned trial Court held that the tenancy right of the plaintiffs over the land in question having been established under the original Landlord the question of sale of the said land vide Ext-A by former tenant did not arise. On that basis the learned trial Court decreed the suit of the plaintiffs for declaration and possession and also for imperfect partition.

7. The aforesaid judgment of the trail Court was brought in appeal by the defendants by Title Appeal No. 40/2000 in the Court of learned Civil Judge (Sr. Division) at Karimganj. The learned lower appellate Court after hearing the parties and on perusal of the materials on record dismissed the appeal on 02.05.2003 upholding the decree of the learned trial court. This is how the defendants have preferred this second appeal challenging the concurrent finding of the learned Court below.

8. This Court while admitting the second appeal on 27.06.2003 framed one substantial question of law ad the same is quoted below:

Whether findings of the learned Court below that chita- mutation will get preference over registered sale-deed (Ext.-A of the suit) was correct and legally tenable?

9. I have heard Mr. G.N. Sahewala, learned counsel assisted by Ms. Ruchika Jain and Mrs. S.S. Bawri for the appellant and Mr. B.R. Dey, learned senior counsel assisted by Mr. P. Sen as well as Ms. B. Das, learned counsel for the respondents.

10. Mr. Sahewalla, learned Senior Counsel for the petitioners submits that the plaintiffs have failed to produce any document of title in support of their purported purchase of the land. They have banked on the endorsement made in the chita by way of mutation over a registered sale deed which is a document of title. Per contra Mr. B.R. Dey, learned Senior counsel appearing for the respondents submits that the chita were prepared by way of field mutation and this chita reflected the original fact position at field. According to the learned Senior Counsel for the respondents by way of making endorsement made in the touzi as well as the chita maintained by the settlement office the existence of the plaintiffs as tenant directly under the Landlord has been recognized. According to the learned counsel, tenancy right can be transferred in two ways, first, by direct sale of tenancy under section 31 of the Sylhet Tenancy Act, 1936 and secondly by subsequent tenancy under the so-called owner and it is done by entering the name of the transferee tenant in the records of the zamindaar. The learned senior counsel has relied on the judgment of Bhagatram v. Kesab Deo reported in AIR 1965 Assam 55 and argued that during pendency of the earlier lease a second lease of the same land can be made by the original landlord. So the legal implication of entering of the name of the transferee tenants in the touzi of the zamindaar (records of Landlord) amounts to subsequent tenancy in favour of the transferee tenant

by the zamindaar directly and thus tenancy so created by endorsement of the touzi is also permissible. Referring to Ext-A registered sale deed of the defendants, the learned senior counsel submits that the said sale deed does not contain any endorsement by the Landlord which is a pre-condition for making sale of tenancy right u/s 31 of the Sylhet Tenancy Act. The alternative pre-condition of endorsement by the Deputy Commissioner is contemplated under Sylhet Tenancy Act, 1936 which is also missing in the present case and as such the sale deed cannot be said to have conferred any title on the purchaser. The provision of Section 31 of the Sylhet Tenancy Act, 1936 according to the learned counsel is the intermediary law of present Section 8 of the Assam (Temporarily Settled Areas) Tenancy Act, 1971 and as such the legal effect of non-compliance of Section 8 of the Assam Tenancy Act, 1971 and that violation of Section 31 of Sylhet Tenancy Act, 1936 are the same.

11. After hearing the learned counsel for the parties and after perusal of the materials on record it is found that the names of the plaintiffs occur in the records of rights maintained in 1968 i.e. Ext.-7. The land was acquired by the State of Assam under Assam State Acquisition of Zamindaari Act, 1951 in the year 1964 and being in possession of land at that time the plaintiffs as well as the defendants acquired the status of tenancy under the State with respect to the respective land under their possession and this is what has been reflected in the khatian as well as chita maintained by the Revenue Authorities. The plaintiffs have been paying land revenue as reflected from the findings of the learned Court below. Admittedly the land in question belong to permanently settled area in the district of Karimganj (erstwhile District of Sylhet) and so after acquisition of the said state the ryots acquired the status of the land holders by operation of law. The learned Courts below, therefore, committed no error in relying on the endorsement made in the revenue record (chita). The substantial question of law is accordingly decided in the affirmation and in favour of plaintiffs.

12. Consequently, the second appeal is dismissed.

13. Parties to bear their own costs.

14. Send down the records after drawing of decree.